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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-352
Table of Allotments,) RM-9786
FM Broadcast Stations.)
(Gaviota, California))
)

TO: Chief, Allocations Branch
Mass Media Bureau

COMMENTS OF STRATOSPHERE

Stratosphere Broadcasting Limited Partnership ("Stratosphere"), by its attorneys, hereby submits its Comments in opposition to the proposed allotment of Channel 266A at Gaviota, California.¹ In support thereof the following is shown.

Brian Costello ("Petitioner") requests that the Commission amend the FM Table of Allotments by allocating Channel 266A to Gaviota, California, as that locality's first local aural transmission service. Pursuant to Section 307(b) of the Communications Act of 1934, as amended, the Commission shall allot channels ". . . among the several States and communities" The Commission, therefore, allots channels only to communities, which it defines as "geographically identifiable population groupings."² If a locality is incorporated or listed in the United States Census as a Census Designated Place ("CDP"), the Commission will usually find that such a locality qualifies as a community.³ However, if the locality is not incorporated and is

¹ Stratosphere is the licensee of KSTT-FM, Channel 267B, Los Osos-Baywood Park, California. The proposed allotment at Gaviota is site restricted in order to avoid a short-spacing to KSTT-FM.

² Grants and Peralta, New Mexico, DA 99-2841 (MMB December 17, 1999) at para. 8.

³ Id.

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not a CDP, “the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes.”⁴ A locality’s mere existence is insufficient to qualify it as a community.⁵

Petitioner has not met its burden here, and Gaviota does not have the characteristics to qualify as a community for allotment purposes. Gaviota is not incorporated, nor is it a CDP. The extremely limited information Petitioner provided does not show that Gaviota has sufficient social, economic or cultural indicia of community status. Not only does Gaviota have very few facilities or services, but Petitioner has failed to show they have any connection to Gaviota. The Commission will reject claims of community status where a connection is not shown between political, social and commercial organizations and the community in question.”⁶

Attached hereto is the Declaration of DeWayne Holmdahl, a former member of the Santa Barbara County Board of Supervisors in whose district Gaviota was located, in which he describes Gaviota’s characteristics. Although the Notice of Proposed Rulemaking states that Gaviota has a population of only 70 persons,⁷ the residential area consists of approximately 30 to 40 homes, mostly associated with the Hollister Ranch development. Twenty years ago, before this development was built, Gaviota’s population was only approximately fifteen people.

⁴ Gulf Hammock, FL (Notice of Proposed Rulemaking), 1996 FCC LEXIS, *1 (1999). See, e.g., Oak Grove, FL, 5 FCC Rcd 3774, 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315, 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685, 2685 (1990).

⁵ Crestview and Westbay, FL, 7 FCC Rcd 3059, 3059 (1992).

⁶ Id.

⁷ See Gaviota, California (Notice of Proposed Rulemaking), DA 99-2759, released December 10, 1999, at para. 2 (citing Rand McNally Commercial Atlas and Marketing Guide (1998)) (“NPRM”).

Gaviota does not have its own post office, public library, municipal services, hospital, local government or elected officials. Contrary to Petitioner's assertion, Gaviota does not maintain its own fire district. Although a Santa Barbara County firehouse is located in Gaviota, Santa Barbara County maintains the firehouse and provides most services to the Gaviota area. The nearby oil refinery, actually located in Las Cruces, is privately owned and not connected in any way to Gaviota. Further, Gaviota does not have any community organizations such as a Chamber of Commerce or Lions Club.

Contrary to Petitioner's assertion,⁸ Gaviota does not maintain its own school system. Rather, although the Vista de Las Cruces School is located in Gaviota, it serves the entire Vista del Mar Union School District, which covers a much larger area than just Gaviota. The fact that the school has approximately 130 students attending kindergarten through 8th grades, which is almost twice Gaviota's stated population of 70, demonstrates that the school district covers much more than Gaviota. Gaviota students in 9th through 12th grades attend school in neighboring towns such as Santa Ynez and Goleta.⁹ The fact that Gaviota children attend school within a larger school system demonstrates that Gaviota is not a community.¹⁰

The absence of businesses in Gaviota also shows that it lacks "community" status. There are no commercial buildings located at the Gaviota turn-off from U.S. Highway 101. Gaviota's only commercial businesses appear to be a fishing tackle rental store and a boat launch located at the pier. These businesses do not identify themselves with Gaviota and do not serve the needs of

⁸ See Gaviota, California (Petition for Rulemaking) at 4 (1999); NPRM at 5.

⁹ See Holmdahl Declaration at 1.

¹⁰ Grants, New Mexico, DA 99-2841 (MMB December 17, 1999) at para. 8.

Gaviota.¹¹ The Gaviota area has fewer businesses and facilities now than it did twenty years ago.¹²

Gaviota State Park and the state beach, while located in the Gaviota area, are not destinations designed for Gaviota residents. Rather, they are state-run recreational areas that attract visitors from throughout California and adjoining states. Because these recreational destinations are not intended to serve the needs of Gaviota, they do not demonstrate that Gaviota is a community for allotment purposes.¹³

Gaviota's lack of community indicia is similar to other cases where the Commission has refused to make a requested allotment. In Avon, North Carolina, 14 FCC Rcd 3939, 3940 (1999), the Commission found that Avon was not a community for allotment purposes where it had a post office for post box service only, where the petitioner failed to provide evidence of businesses that identify themselves solely with Avon, and where the petitioner "provided no information as to any social or civic organizations which may exist in Avon, or any schools, libraries or other governmental services which are located in Avon." Although the 1998 Rand McNally Commercial Atlas indicated that Avon's full-time population was 500 persons and had a summer population of 1500, the Commission concluded that Avon was not a community because the petitioner could not provide a nexus between the political, social and commercial organizations and the community in question.¹⁴

¹¹ See Holmdahl Declaration at 1. See, e.g., Crestview and Westbay, FL, 7 FCC Rcd at 3059 (finding that the locality is not a community for allotment purposes where the locality does not contain businesses or organizations which identify themselves with the locality); Graham, WA, 7 FCC Rcd 1676, 1676 (1992) (finding same).

¹² See Holmdahl Declaration at 2.

¹³ Graham, WA, 7 FCC Rcd at 1676.

¹⁴ Id.

Here, Gaviota does not have a post office, Petitioner has not identified any Gaviota businesses which identify themselves solely with Gaviota, and Gaviota has no community organizations or municipal services. Gaviota's population is a mere 70 persons, as opposed to Avon's full-time population of 500. The lack of commercial, political and social organizations in Gaviota demonstrate that it is not a geographically identifiable population grouping. Rather, it is merely a geographic location that functions in conjunction with nearby cities like Buellton, Lompoc, Goleta, and other parts of Santa Barbara County.¹⁵


In Deerfield, Missouri, 11 FCC Rcd 4663, 4663 (1996) (*citing* Searles Valley, CA, 3 FCC Rcd 5221 (1988)), the Commission stated that it "may find that a population grouping does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations and some form of government." This is precisely Gaviota's situation and the Commission should find that Gaviota is not a community for allotment purposes.

¹⁵ See, e.g., Hannahs Mills and Milledgeville, GA, 7 FCC Rcd 3944, 3945 (1992).

Wherefore, for the foregoing reasons, Stratosphere respectfully requests that the Commission deny Petitioner's request to amend the Table of Allotments and that it terminate this proceeding.

Respectfully submitted,

STRATOSPHERE BROADCASTING
LIMITED PARTNERSHIP

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January 28, 2000

Its Attorneys

DECLARATION OF DEWAYNE HOLMDAHL

I, DeWayne Holmdahl, hereby declare as follows:

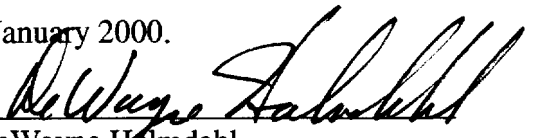
In 1945, I moved to Nojoqui, California, located four miles from Gaviota. I resided there until 1950 and then moved to Lompoc, ten miles from Gaviota. From 1981 to 1989, I served on the Santa Barbara County Board of Supervisors. My District included Gaviota and the Hollister Ranch. During my service on the Board I went through Gaviota [at least] three days a week. After I left the Board of Supervisors in 1989, I started a land use business in Lompoc. Because of the location of my business, I have driven through Gaviota approximately one to two times per month for the past ten years. In 1996, I was elected to the Lompoc City Council. As a council member, I have the occasion to drive through Gaviota once a month to attend meetings in Santa Barbara. I most recently visited Gaviota on January 17, 2000.

Based on my knowledge of Gaviota and the surrounding area, set forth below is information about Gaviota's attributes:

1. Gaviota does not maintain its own school system. The Vista Del Mar Union School District, comprised of the Vista de Las Cruces School for grades K through 8, serves Gaviota and other areas of Santa Barbara County. Students in grades 9-12 attend high school in neighboring towns, including Santa Ynez and Goleta.
2. Gaviota does not have a public library, post office, local government, elected officials, hospital, churches or community organizations such as a Chamber of Commerce or Lions Club.
3. There is a public beach and State Park located in the Gaviota area that are run by the State of California.
4. There are no commercial buildings located at the Gaviota turn-off from U.S. Highway 101. Gaviota's only commercial businesses appear to be a fishing tackle rental store and a boat launch located at the pier, which are not specifically identified as Gaviota businesses.
5. Although there is a Santa Barbara County firehouse located in Gaviota, Santa Barbara County maintains the firehouse.

6. The nearby oil refinery, located in Las Cruces, is privately owned and does not serve Gaviota. Employees of the refinery come from many different areas within Santa Barbara County.
7. The Gaviota residential area consists of approximately 30 to 40 homes, mostly associated with the Hollister Ranch development.
8. Twenty years ago, before the Hollister Ranch development was built, Gaviota's population was only approximately 15 persons.
9. The Gaviota area has fewer businesses and facilities now than it did twenty years ago.
10. Santa Barbara County provides most of the public services to the Gaviota area. Most residents do their shopping in Buellton, Lompoc, Goleta and other nearby communities.


I declare under penalty of perjury that the foregoing facts are true and correct to my personal knowledge. Executed on the 27 day of January 2000.


DeWayne Holmdahl

CERTIFICATE OF SERVICE

I, Joseph C. Fezie, do hereby certify that on the 28th day of January, 2000, a copy of the foregoing Comments of Stratosphere was served on the following party by first-class United States mail, postage prepaid.

Brian Costello
15275 Old Cazadero Road
Guernerville, CA 95446



Joseph C. Fezie